

AMENDED IN SENATE APRIL 14, 2011

AMENDED IN SENATE APRIL 4, 2011

SENATE BILL

No. 595

Introduced by Senator Wolk

February 17, 2011

An act to amend Section 523 of the Harbors and Navigation Code, and to amend Section 6302.1 of, and to add Sections ~~6302.2~~, 6302.3, 6302.4, and 6302.5 to, the Public Resources Code, relating to tidelands and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

SB 595, as amended, Wolk. Tidelands and submerged lands: removal of vessels.

Existing law authorizes any peace officer, as described, any employee or officer of the State Lands Commission designated by the commission, or any lifeguard or marine safety officer employed by a county, city, or district, while engaged in the performance of official duties, to remove, and, if necessary, store a vessel, as defined, removed from a public waterway under specified circumstances.

This bill would eliminate the authority of any employee or officer of the State Lands Commission designated by the commission, while engaged in the performance of official duties, to remove and, if necessary, store a vessel removed from a public waterway.

Existing law authorizes the commission to remove from areas under its jurisdiction any vessel, boat, raft, or other similar watercraft that is left unattended and is moored, docked, or beached as to obstruct traffic or to create a hazard to other vessels or property, that poses critical and immediate danger to navigation or the public health, safety, or welfare, or that hinders navigation or creates a public nuisance.

This bill would revise those provisions to authorize the commission to remove ~~those watercraft~~ *a vessel, as defined*, in those and similar conditions immediately and without notice. The bill would authorize the commission to remove and dispose of ~~those watercraft and to remove and dispose~~, from areas under its jurisdiction, ~~watercraft that have a vessel that has~~ been placed on state lands without its permission if, prior to removal, the commission gives a 30-day notice ~~by posting notice on the watercraft and notifying to remove the vessel, as prescribed, and uses reasonable means to identify and locate the owner and any lienholder, if known.~~

Existing law authorizes the commission, through appropriate action in the courts, to remove or destroy a vessel, boat, watercraft, or other similar obstruction that hinders navigation or otherwise creates a public nuisance in areas under the commission's jurisdiction.

This bill would, instead, provide that a ~~hulk, derelict, wreck, or parts of a ship, vessel, or other watercraft sunk, beached, grounded, or floating and allowed to remain in an unseaworthy or dilapidated condition in areas under the commission's jurisdiction~~ *that remains unclaimed* for a period longer than 30 days ~~without its consent after notice of approval~~ is abandoned property. The bill would establish procedures for the commission to sell, destroy, or otherwise dispose of this property. The bill would require that any proceeds from the sale of this property, less the commission's costs, be deposited into the General Fund. The bill would further authorize the commission, at its discretion, to remove an abandoned or derelict vessel on a navigable waterway that is not under its jurisdiction, if requested to do so by another public entity that has regulatory authority over the area where the vessel is located.

This bill would exempt the above-described actions of the commission related to the removal, disposal, and destruction of ~~certain vessels, boats, rafts, watercraft, a vessel~~ or other similar obstructions that hinder navigation or otherwise create a public nuisance from ~~laws or regulations that govern the acquisition, removal, disposal, or destruction of state property by a state agency~~ *the State Contract Act*.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 523 of the Harbors and Navigation Code
- 2 is amended to read:

1 523. (a) Any peace officer, as described in Section 663, or any
2 lifeguard or marine safety officer employed by a county, city, or
3 district while engaged in the performance of official duties, may
4 remove, and, if necessary, store a vessel removed from a public
5 waterway under any of the following circumstances:

6 (1) When the vessel is left unattended and is moored, docked,
7 beached, or made fast to land in a position that obstructs the normal
8 movement of traffic or in a condition that creates a hazard to other
9 vessels using the waterway, to public safety, or to the property of
10 another.

11 (2) When the vessel is found upon a waterway and a report has
12 previously been made that the vessel has been stolen or a complaint
13 has been filed and a warrant thereon issued charging that the vessel
14 has been embezzled.

15 (3) When the person or persons in charge of the vessel are by
16 reason of physical injuries or illness incapacitated to an extent as
17 to be unable to provide for its custody or removal.

18 (4) When an officer arrests any person operating or in control
19 of the vessel for an alleged offense, and the officer is, by any
20 provision of this code or other statute, required or permitted to
21 take, and does take, the person arrested before a magistrate without
22 unnecessary delay.

23 (5) When the vessel interferes with, or otherwise poses a danger
24 to, navigation or to the public health, safety, or welfare.

25 (6) When the vessel poses a threat to adjacent wetlands, levies,
26 sensitive habitat, any protected wildlife species, or water quality.

27 (7) When a vessel is found or operated upon a waterway with
28 a registration expiration date in excess of one year before the date
29 on which it is found or operated on the waterway.

30 (b) Costs incurred by a public entity pursuant to removal of
31 vessels under subdivision (a) may be recovered through appropriate
32 action in the courts of this state.

33 SEC. 2. Section 6302.1 of the Public Resources Code is
34 amended to read:

35 6302.1. (a) (1) The commission may take immediate action,
36 without notice, to remove from areas under its jurisdiction a vessel;
37 ~~boat, raft, or other similar watercraft~~ that is left unattended and is
38 moored, docked, beached, or made fast to land in a position as to
39 obstruct the normal movement of traffic or in a condition as to

1 create a hazard to navigation, other vessels using a waterway, or
2 the property of another.

3 (2) The commission may take immediate action, without notice,
4 to remove from areas under its jurisdiction a vessel, ~~boat, raft, or~~
5 ~~other similar watercraft~~ that poses a significant threat to the public
6 health, safety, or welfare or to sensitive habitat, wildlife, or water
7 quality, or that constitutes a public nuisance.

8 (3) *A vessel removed under this section that remains unclaimed*
9 *for 30 days after notice of removal is abandoned property.*

10 ~~(3) After removal of the vessel, boat, raft, or other similar~~
11 ~~watercraft~~

12 (4) *After removal of the vessel pursuant to paragraph (1) or (2),*
13 *the commission shall mail a notice to the owner, if known, and*
14 *any known lienholder, that informs the owner and lienholder that*
15 *the property will be declared abandoned if it remains unclaimed*
16 *for 30 days and the commission may dispose of the vessel, ~~boat,~~*
17 *~~raft, or other similar watercraft~~ pursuant to Section 6302.3 if it*
18 *remains unclaimed for 30 days.*

19 (b) (1) The commission may remove from areas under its
20 jurisdiction a vessel, ~~boat, raft, or other similar watercraft, or a~~
21 ~~buoy, anchor, mooring, or other ground tackle used to secure a~~
22 ~~vessel, boat, raft, or other similar watercraft that has been placed~~
23 ~~on state lands without its permission. Prior to removal of the vessel,~~
24 ~~boat, raft, or other similar watercraft, or the buoy, anchor, mooring,~~
25 ~~or other ground tackle, the commission shall give a 30-day notice~~
26 ~~by attaching it to the vessel, boat, raft, or other similar watercraft,~~
27 ~~or to the buoy, anchor, mooring, or other ground tackle. If the~~
28 ~~owner or any lienholder is known, the commission shall also mail~~
29 ~~a notice to the owner and the lienholder.~~

30 ~~(2) After the expiration of the 30 days' notice period as provided~~
31 ~~in paragraph (1), the commission may remove the vessel, boat,~~
32 ~~raft, or other similar watercraft, or the buoy, anchor, mooring, or~~
33 ~~other ground tackle or allow it to remain in place until disposed~~
34 ~~of as provided in Section 6302.3.~~

35 (e) ~~Pursuant to Section 6302.2, the commission may dispose of~~
36 ~~a vessel, boat, raft, or other similar watercraft, or a buoy, anchor,~~
37 ~~mooring, or other ground tackle removed under this section that~~
38 ~~remains unclaimed 30 days after removal. that has been placed~~
39 ~~on state lands without its permission. Prior to removal of the vessel,~~
40 ~~the commission shall do both of the following:~~

1 (A) Give a 30-day notice to remove the vessel by attaching it to
2 the vessel in a clearly visible place.

3 (B) Use reasonable means to identify and locate the owner and
4 any lienholder. If the owner is located, the commission shall mail
5 notice to the owner to remove the property by a date certain at
6 least 15 days from the date of the notice.

7 (2) If a vessel remains unclaimed after the expiration of the 30
8 days' notice period and the 15 days' owner notice, if applicable,
9 in accordance with paragraph (1), it is abandoned property and
10 the commission may direct the disposition of the property pursuant
11 to Section 6302.3. The commission may also either remove the
12 vessel or allow it to remain in place until the commission takes
13 action to dispose of the property.

14 ~~(d)~~

15 (c) Upon request of the owner and after payment of the costs
16 of removal and storage, the commission shall return to the owner
17 a vessel, boat, raft, or other similar watercraft, or a buoy, anchor,
18 mooring, or other ground tackle removed under this section.

19 (d) The commission, at its discretion, may remove and dispose
20 of an abandoned or derelict vessel on a navigable waterway in
21 the state that is not under the jurisdiction of the commission
22 pursuant to this section, if requested to do so by another public
23 entity that has regulatory authority over the area where the vessel
24 is located.

25 (e) The commission may recover all costs incurred in removal
26 actions undertaken pursuant to this section ~~through appropriate~~
27 ~~action in the courts of this state, including administrative costs~~
28 ~~and the costs of compliance with the requirements of the California~~
29 ~~Environmental Quality Act (Division 13 (commencing with Section~~
30 ~~21000), through an appropriate action the courts of this state or~~
31 ~~by use of any available administrative remedy.~~

32 (f) For purposes of this section the following definitions apply:

33 (1) "Appropriate action" means any cause of action available
34 at law or in equity.

35 (2) "Commission" includes the staff or agents of the commission
36 or other federal, state, or local agencies operating in concert with
37 or under the direction of the commission.

38 (3) "Vessel" includes any of the following:

39 (A) A vessel, boat, raft, or similar watercraft.

1 (B) A buoy, anchor, mooring, or other ground tackle used to
2 secure a vessel, boat, raft, or similar watercraft.

3 (C) A hulk, derelict, wreck, or parts of a ship, vessel, or other
4 watercraft.

5 SEC. 3. Section 6302.2 is added to the Public Resources Code,
6 to read:

7 6302.2. (a) A hulk, derelict, wreck, or parts of a ship, vessel,
8 or other watercraft, sunk, beached, grounded, or floating and
9 allowed to remain in an unseaworthy or dilapidated condition in
10 areas under the commission's jurisdiction for a period longer than
11 30 days without its consent is abandoned property.

12 (b) Pursuant to Section 6302.3, the commission may take title
13 to abandoned property described in subdivision (a) for the sole
14 purpose of abatement, and without satisfying any lien on the
15 property, may cause the property to be sold, destroyed, or otherwise
16 disposed of in any manner it determines is expedient or convenient.
17 Title to property transferred by the commission by sale or otherwise
18 to third parties shall be clear of any lien or encumbrance.

19 (c) Prior to making a disposition of abandoned property pursuant
20 to Section 6302.3, the commission shall use reasonable means to
21 identify and locate the owner and any lienholder. If the owner is
22 located, the commission shall give the owner written notice to
23 remove the property by a date certain at least 15 days from the
24 date of the notice. Notice to the owner to remove the property shall
25 also be posted on the property, if practicable, in a clearly visible
26 place. If the owner cannot be located or the owner fails to respond
27 to the mailed or posted notice or fails to remove the property within
28 the time provided or extended, the commission may direct
29 disposition of the property pursuant to Section 6302.3.

30 (d) The commission's cost of disposing of abandoned property,
31 including staff time and legal and attorney's fees, may be recovered
32 by appropriate action in any court in which an action may be
33 properly brought or by use of any available administrative remedy.
34 If the property is sold, the commission may recover its costs from
35 any proceeds of the sale and any additional funds received shall
36 be deposited into the General Fund.

37 (e) The commission, at its discretion, may remove an abandoned
38 or derelict vessel on a navigable waterway in the state that is not
39 under the jurisdiction of the commission pursuant to this section;

1 if requested to do so by another public entity that has regulatory
2 authority over the area where the vessel is located.

3 ~~SEC. 4.~~

4 *SEC. 3.* Section 6302.3 is added to the Public Resources Code,
5 to read:

6 ~~6302.3. (a) The commission shall direct disposition of property~~
7 ~~subject to disposal pursuant to Section 6302.1 or 6302.2 at a~~
8 ~~properly noticed commission meeting. The commission shall use~~
9 ~~reasonable means to identify and locate the owner and any~~
10 ~~lienholder of property that may be disposed of at that hearing.~~

11 *6302.3. (a) The commission, at a properly noticed commission*
12 *hearing, may take title to an abandoned vessel subject to disposal*
13 *pursuant to Section 6302.1 for the sole purpose of abatement,*
14 *without satisfying any lien on the property, and may cause the*
15 *property to be sold, destroyed, or otherwise disposed of in any*
16 *manner it determines is expedient or convenient. Those abandoned*
17 *vessels shall not be considered surplus state property for the*
18 *purposes of removal, disposal, or destruction. Title to property*
19 *transferred by the commission by sale or otherwise to third parties*
20 *shall be clear of any lien or encumbrance.*

21 (b) Notice of that meeting shall be given to a known owner and
22 known lienholder, and the known owner, lienholder, or other
23 interested party shall be given the right to appear and be heard
24 prior to disposition of the property.

25 (c) A hearing on the disposition of property held pursuant to
26 this section shall be an informal hearing pursuant to Section
27 11445.20 of the Government Code, unless designated as a formal
28 hearing by the commission.

29 (d) Any action with regard to the disposition of the property as
30 directed by the commission, with the exception of returning the
31 property to the owner, shall be delayed for 30 days after the date
32 of the commission's determination, ~~to permit response by the~~
33 ~~owner.~~ *allow the owner to pursue any other cause of action in law*
34 *or equity.*

35 (e) *The commission's cost of disposing of abandoned property,*
36 *including staff time and legal and attorney's fees, may be recovered*
37 *by appropriate action in any court in which an action may be*
38 *properly brought or by use of any available administrative remedy.*
39 *If the property is sold, the commission may recover its costs from*

1 *any proceeds of the sale and any additional funds received shall*
2 *be deposited into the General Fund.*

3 ~~SEC. 5.~~

4 *SEC. 4.* Section 6302.4 is added to the Public Resources Code,
5 to read:

6 6302.4. (a) At the request of the commission, an employee or
7 agent of the commission or a peace officer of the federal or state
8 government or a city, county, or other political subdivision of the
9 state shall have the authority to board a vessel for the purposes of
10 carrying out Section 6302.1, ~~6302.2~~, or 6302.3.

11 (b) An action of the commission with regard to any property
12 acquired or disposed of pursuant to Section 6302.1, ~~6302.2~~, or
13 ~~6302.3 is exempt from laws or regulations that govern the~~
14 ~~acquisition, disposal, or destruction of property by a state agency.~~
15 *or 6302.3 is exempt from the State Contract Act (Chapter 1*
16 *(commencing with Section 10100) of Part 2 of Division 2 of the*
17 *Public Contract Code).*

18 ~~SEC. 6.~~

19 *SEC. 5.* Section 6302.5 is added to the Public Resources Code,
20 to read:

21 6302.5. To the extent that Sections 6302.1, ~~6302.2~~, 6302.3,
22 and 6302.4 may be in conflict with Article 1 (commencing with
23 Section 510) of Chapter 3 of Division 3 of the Harbors and
24 Navigation Code, Sections 6302.1, ~~6302.2~~, 6302.3, and 6302.4
25 shall govern.